

REMARKS

Claims 1-23 are pending. Claims 1, 12 and 23 have been amended. Support for the claim amendments is found, for example, in paragraph 45. New claim 24 is added and is supported, for example, by Figure 3. In the above referenced Office Action, the pending claims have been rejected as being anticipated by Mehra (US 6,185,459) under 35 U.S.C. 102(b) and/or as being obvious over Mehra under 35 U.S.C. 103(a).

Claim 1 is directed to detecting whether there is a sudden increase in the frequency of first events of a plurality of events corresponding to onset of a second event of the plurality of sensed events, wherein the sudden increase in frequency of the first events corresponds to an increase in frequency over a time period of up to approximately one minute. Mehra discloses a pacemaker for delivering a tachyarrhythmia prevention pacing mode for an extended time period, with a metric of success of the tachyarrhythmia prevention pacing mode being monitored over the extended time period. The metric is monitored over a time period extending for more than one day and may be defined as the number of PACs per hour. Mehra fails to teach or suggest detecting a sudden increase in the frequency of first events wherein the sudden increase in frequency corresponds to an increase over a time period of up to approximately one minute. Accordingly, Mehra fails to anticipate or render obvious the pending claims. Applicant respectfully requests withdrawal of the rejection.

Mehra uses the metric monitored over the extended time period for determining the success of the tachyarrhythmia prevention pacing mode. Mehra fails to teach or suggest delivering the therapy in response to the detecting of the sudden increase in the frequency of first events, wherein the first events correspond to premature atrial contractions, as set forth in new claim 24.

With regard to claims 8-11 and 19-22, the Examiner asserts that it was known in the art that determining whether the second event is detected during delivery of therapy; determining whether therapy has been delivered a predetermined number of times; or determining whether therapy has been

delivered more than a predetermined time threshold is used to provide accurate and effective therapy and to prevent further damage to the patient. The Examiner further states that the Applicant has not disclosed that determining whether the second event is detected during delivery of therapy; determining whether therapy has been delivered a predetermined number of times; or determining whether the therapy has been delivered for more than a predetermined time threshold provides an advantage, is used for a particular purpose, or solves a stated problem and that it would have been an obvious matter of design choice to modify Mehra to obtain the invention as specified in the claims.

The Examiner's attention is directed, for example, to Figure 6 and to paragraph 63, wherein the purpose for determining whether the therapy has been delivered a predetermined number of times is described as being used for adjusting the parameters for detecting an increased PAC frequency in order to reduce the triggering criteria for determining that there is an increase in the frequency of PACs (see also pending claims 9 and 20).

The Examiner bears the burden of establishing a *prima facie* case of obviousness even when the Examiner relies upon a single reference. "Even when obviousness is based on a single prior art reference, there must be a showing of a suggestion or motivation to modify the teachings of that reference." In re Kotzab, 55 USPQ2d 1313, 1316-17 (Fed. Cir. 2000). As the Examiner states, the reference fails to disclose determining whether the second event is detected during delivery of therapy; determining whether therapy has been delivered a predetermined number of times; or determining whether the therapy has been delivered for more than a predetermined time threshold. Since no teaching or suggestion of the claimed elements is made, the reference fails to render the pending claims obvious to a skilled artisan. If indeed the elements were known in the art, then the Examiner ought to present evidence to support that conclusion. In re Lee, 61 USPQ2d at 1435 ("[W]hen they rely on what they assert to be general knowledge to negate patentability, that knowledge must be

articulated and placed on the record.”). The failure to do so renders the Examiner’s rejection arbitrary, capricious and unreasonable. See id. at 1434. The Examiner may not arbitrarily, capriciously and unreasonably deny a claim by a mere declaration of obviousness without a supporting evidentiary record.

The Examiner presented no evidence of any suggestion or motivation to modify the Mehra reference to arrive at the claimed invention. Nor has the Examiner presented any evidence that the recited elements are known in the art. For at least these reasons, the Examiner has failed to establish a *prima facie* case for non-patentability of Applicant’s claims. Withdrawal of this ground of rejection is respectfully requested.

Accordingly, Applicant respectfully asserts that the present claims are in condition for allowance. Withdrawal of the instant rejections and issuance of a Notice of Allowance is respectfully requested.

Respectfully submitted,

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